

Equal Health Care Coverage for Domestic Partners
By Gretchen Lachance, Esq.
K&R Law Group LLP

California has seen much political activity in recent years regarding the rights of same-sex partners-- including efforts to both recognize and ban same sex marriage. In the midst of the controversy over the right of same-sex couples to marry, a new law regarding domestic partnerships was enacted by the California Legislature. Assembly Bill 2208 (“AB 2208”) requires health care service plans and insurers to provide health care coverage to domestic partners that is equal to the coverage provided to the spouses of individuals with the health care coverage.

Prior to AB 2208, health care service plans and insurers were required to *offer* group health care coverage to employers and guaranteed associations (collectively referred to as “employers” for ease of discussion) for the domestic partners of employees or subscribers, but an employer was not required to *provide* coverage to employees’ or subscribers’ domestic partners-- regardless of whether they provided coverage for employees’ spouses. AB 2208 amended the law to require health care service plans and insurers offering group coverage to *provide* (as opposed to merely *offer*) equal coverage to registered domestic partners of employees or subscribers to the same extent and subject to the same terms and conditions as provided to spouses of their employees or subscribers. Under the new law, health care service plans and insurers are now prohibited from offering or providing coverage for registered domestic partners that is not equal to the coverage provided to spouses. Therefore, by virtue of AB 2208, employers can no longer choose to limit health care coverage to spouses of their employees. If employers offer coverage for spouses, they must also offer it for domestic partners.

In addition, AB 2208 added a provision to the California Insurance Code that requires insurers to provide equal coverage for domestic partners in all insurance policies, not merely in group health care policies. Accordingly, insurers are now required to provide equal coverage for domestic partners in individual policies as well as in group policies (there was no previous requirement to even *offer* such coverage). This provision, however, only applies to insurers, and not to health care service plans. There is no equivalent provision in the law for equal coverage in individual health care service plan contracts.

To be eligible for coverage under this law, domestic partners must be registered with the California Secretary of State. Domestic partnerships are available only to same sex couples and to couples where one or both of the individuals is over the age of 62 and meets certain eligibility requirements of the Social Security Act. Health care service plans and insurers are allowed to require the employee to present proof of eligibility, but the law does not specify what type of proof of eligibility may be required. However, if proof of eligibility is required for domestic partners, it also must be required for spouses.

AB 2208 does not change federal continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). Language in the statute specifically states that there is no intent to expand federal COBRA requirements. However, domestic partners may be eligible for continuation coverage under other laws.

AB 2208 is effective for group agreements with health care services plans and group insurance policies issued, amended, delivered or renewed on or after January 2, 2005. For all other types of insurance policies, the effective date is January 1, 2005.

While AB 2208 applies directly to health care service plans and insurers, employers also may have responsibilities arising from the law. For instance, there may be tax implications or distinctions when providing benefits to the domestic partner of an employee. Also, employers should be aware of a similar law that takes effect January 1, 2005--the California Domestic Partners Rights and Responsibilities Act of 2003 (the "Domestic Partners Act"). The Domestic Partners Act provides that registered domestic partners have the same rights and responsibilities and the same obligations and duties under law as granted to and imposed upon spouses. Employers should contact their employment and tax counselors regarding employer responsibilities under these laws.

AB 2208 is entitled the California Insurance Equity Act, and it was sponsored by the Insurance Commissioner and Equality California. The citations for the two laws discussed in this article are as follows: AB 2208 (Kehoe, Chapter 488, Statutes of 2004) amends Section 1374.58 of the California Health and Safety Code and Section 10121.7 of the California Insurance Code, and adds Section 381.5 to the California Insurance Code. The Domestic Partners Rights and Responsibilities Act of 2003 (Assembly Bill 205, Goldberg, Chapter 421, Statutes of 2003) amends Sections 297, 298 and 298.5 of and adds Sections 297.5, 299.2, and 299.3 to the Family Code, amends Section 14771 of the Government Code, and Section 3 of Chapter 447 of the Statutes of 2002.

For more information on this new law and related topics, please contact Gretchen Lachance at (916) 554-0240 or at glachance@sac.knrlaw.com.